

REMARKS

Summary of the Office Action

As Applicant is filing this Request for Continued Examination in lieu of an Appeal, Applicant summarizes the Office Action mailed September 15, 2009 that prompted the previously-filed Pre-Appeal Brief Request for Review.

Claims 1 – 16 are withdrawn from consideration.

Claims 17 – 20 stand rejected under 35 U.S.C. § 103(a) as allegedly unpatentable over Journal Publication “The Complete Guide to Cosmetic Facial Surgery” by John A. McCurdy M.D. (“McCurdy”) in view of Journal Publication “Video-Endoscopic Facelift Aesthetic Plastic Surgery” by Luiz S. Toledo, M.D. (“Toledo”), U.S. Patent Application Publication No. 2003/0018350 to Zucherman *et al.* (“Zucherman”) and Journal Publication “Surgery: Scientific Principles and Practice, Second Edition” by Thomas Ray Stevenson and Lazar J. Greenfield *et al.* (“Stevenson”).

Summary of the Response to the Office Action

Applicant amends independent claim 17 and adds new claims 21 – 23 to define the claimed subject matter further, and cancels claims 18 – 20 without prejudice or disclaimer. Thus, claims 17 and 21 – 23 are pending for consideration. Support for these amendments is found at least in page 7, line 23 to page 9, line 3 of the specification as originally filed.

Applicant respectfully submits that the above amendments introduce no new matter within the meaning of 35 U.S.C. §132, and requests reconsideration and timely withdrawal of the pending rejections for at least the reasons discussed below.

The Rejections under 35 U.S.C. §103

Independent claim 17 stands rejected under 35 U.S.C. § 103(a) as allegedly unpatentable McCurdy in view of Toledo, Zucherman, and Stevenson. Applicant respectfully submits that the combined references do not disclose or suggest all of the claimed features, nor would a person of ordinary skill in the relevant field be prompted to combine the cited prior art in the manner claimed. To establish an obviousness rejection under 35 U.S.C. § 103(a), four factual inquiries must be examined. The four factual inquiries include (a) determining the scope and contents of the prior art; (b) ascertaining the differences between the prior art and the claims in issue; (c) resolving the level of ordinary skill in the pertinent art; and (d) evaluating evidence of secondary consideration. *Graham v. John Deere*, 383 U.S. 1, 17-18 (1966). In view of these four factors, the analysis supporting a rejection under 35 U.S.C. § 103(a) should be made explicit, and should “identify a reason that would have prompted a person of ordinary skill in the relevant field to combine the [prior art] elements” in the manner claimed. *KSR Int’l. Co. v. Teleflex, Inc.*, 127 S. Ct. 1727, 1741 (2007). Furthermore, even if the prior art may be combined, there must be a reasonable expectation of success, and the reference or references, when combined, must disclose or suggest all of the claim limitations. See *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991).

Here, even if the references could be combined with a reasonable expectation of success, the combined references fail to prompt a person of ordinary skill in the relevant field to combine the cited prior art to “pass[] a first rod having a first diameter through [an] entire marked cutaneous tissue area.” Zucherman, for example, teaches a tool that is exclusively

designed for surgeries in small areas of the backbone, as seen by the short length and shape of the working portion of the Zucherman dilator 100. Rather than “passing a first rod having a first diameter through [an] entire marked cutaneous tissue area” only tip 106 is inserted into a patient, from first end 110 to second end 108. Zucherman at [0013]. Furthermore, the openings made by the Zucherman devices are approximately ten times smaller than the incisions recited in claim 17, with nothing suggesting that the Zucherman dilator could be used for cutaneous detachment, especially incisions of the size recited in the claims.

Accordingly, Zucherman fails to teach or suggest each and every feature of amended claim 17.

While the remaining references are cited as allegedly teaching other features of claim 17, none of them teach or suggest “passing a first rod having a first diameter through [an] entire marked cutaneous tissue area.” Thus Zucherman, alone or combined with the other references, fails to prompt a person of ordinary skill in the relevant field to combine the cited prior art to achieve the claimed subject matter. For at least this reason, Applicant submits that amended claim 17 is allowable.

Notwithstanding and in addition to the above, Applicant submits that claim 17 is also allowable because none of the cited references teach or suggest that “steps c) through h) are performed without cauterization.” The Office Action expressly indicates that “Toledo discloses the use of cauterization for hemostasis.” Office Action at 5. McCurdy teaches using adrenaline or anesthesia to control bleeding, *id.* at 47 and 50, but discloses that these techniques can actually increase the possibility of postoperative bleeding. McCurdy at 51. Stevenson teaches ensuring hemostasis, but is silent as to how it is achieved. Stevenson at

2270. Zucherman, the remaining reference, says nothing about cauterization. Thus, alone or combined, the cited references also fail to teach or suggest that “steps c) through h) are performed without using cauterization.”

For at least these reasons, Applicant respectfully submits that amended claim 17 is allowable, and that the rejection of claims 18 – 20 is moot since they are cancelled. Since none of the other prior art of record, alone or in any combination, discloses or suggests all the features of the claimed subject matter, Applicant respectfully requests that the rejections under 35 U.S.C. §103(a) be withdrawn.

New Claims 21 – 23

Applicant also adds new claims 21 – 23 to depend from independent claim 17. Applicant submits that support for these claims is found from at least page 7, line 23 to page 9, line 3 of the specification as originally filed. Thus, Applicant respectfully submits that these new claims introduce no new matter within the meaning of 35 U.S.C. §132. Applicant further submits that claims 21 – 23 are allowable at least for their dependence from allowable claim 17, and requests that they be allowed.

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CONCLUSION

Applicant believes that a full and complete response has been made to the pending Notice and respectfully submits that all of the stated grounds for rejection have been overcome or rendered moot. Accordingly, Applicant respectfully submits that all pending claims are allowable and that the application is in condition for allowance.

Should the Examiner feel that there are any issues outstanding after consideration of this response, the Examiner is invited to contact Applicant's undersigned representative at the number below to expedite prosecution.

Prompt and favorable consideration of this Reply is respectfully requested.

Respectfully submitted,
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